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No. 967

IN THE

Supreme Court of the United States

OCTOBER TERM, 1960

THE LEGISLATURE OF LOUISIANA, ET AL.,
Appellants

versus

UNITED STATES OF AMERICA,
Appellees

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF LOUISIANA

JURISDICTIONAL STATEMENT

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SUBJECT INDEX

	Page
Opinions Below	2
Jurisdiction	2
Questions Presented	2
Statutes Involved	3
Statement	4
The Questions are Substantial	7
Alleged Interest of the United States	8
Federal Courts have no veto power over State Legislation	15
Motives of the Legislature	18
Certificate of Service	22
Appendix A:	
Temporary Injunction	23
District Court Opinion	26
Appendix B:	
Louisiana Constitution Articles	43, 44
Act 5 2nd Extraordinary Session La. Legislature of 1960	44
S. C. R. No. 7 3rd Extraordinary Session La. Legislature of 1960	47
Act 4 3rd Extraordinary Session La. Legislature of 1960	51
Appendix C:	
Legislative History, Civil Rights Acts	59

AUTHORITIES CITED

Page

Cases

A. F. of L. v. Watson,
327 US 582, 90 L ed. 873 18

Arizona v. California,
283 US 423, 75 L ed. 1154 18

Barenblatt v. U. S.,
360 US 109, 3 L ed. 2d 1115 18

Beauharnais v. Ill.,
343 US 250, 96 L ed. 919 8

Botany Worsted Mills v. U. S.,
278 US 282, 73 L ed. 379 14

Brush v. Com. Int. Rev.,
300 US 352, 81 L ed. 691 21

Calder v. Michigan,
218 US 591, 54 L ed. 1163 18

Continental Baking Co. v. Woodring,
286 US 352, 76 L ed. 1155 17

Continental Casualty Co. v. U. S.,
314 US 527, 86 L ed. 427 14

Dick v. Marr, 197 F. 498 12

Duplex Printing Press Co. v. Deering,
254 US 443, 65 L ed. 349 12

Ellis v. U. S., 206 US 246, 51 L ed. 1047 19

Faubus v. U. S., 254 F. 2d 797 12

Haili v. U. S., 260 F. 2d 744 13

Hampton Jr. & Co. v. U. S.,
276 US 394, 72 L ed. 631 19

Harisiades v. Shaugnessy,
342 US 580, 96 L ed. 586 8

Higginbotham v. Baton Rouge,
306 US 535, 83 L ed. 968 16

Keim v. U. S., 177 US 290, 44 L ed. 774 16

McChord v. L. & N. R. Co.,
183 US 483, 46 L ed. 289 16

Mississippi v. Johnson,
71 US 475, 18 L ed. 437 16

New Orleans v. Warner,
175 US 120, 44 L ed. 96 18

New Orleans Waterworks v. N. O.,
164 US 471, 41 L ed. 518 16

Newton v. Mahoning City,
100 US 548, 25 L ed. 710 16

Palmer v. Mass., 308 US 79, 84 L ed. 93 14

Parker v. Brown, 317 US 341, 87 L ed. 315 15

Pickering v. P.R.R. Co., 151 F. 2d 240 13

Raleigh & G. R. Co. v. Reid,
13 Wall 269, 20 L ed. 570 14

Root Refg. Co. v. Universal Oil Prod. Co.,
196 F. 2d 514 12

Screws v. U. S., 325 US 10, 89 L ed. 1506 20

Stefanelli v. Minard,
342 US 117, 96 L ed. 138 20

Stephenson v. Binford,
287 US 251, 77 L ed. 288 18

Stone v. Farmers L. & T. Co.,
116 US 307, 29 L ed. 636 17

Taylor v. Beckham,
178 US 548, 44 L ed. 1187 15

U. S. v. Darby, 312 US 100, 85 L ed. 609 15

U. S. v. 1960 Acres of Land, 54 F. Supp. 867 9

U. S. v. Scoratow, 137 F. Supp. 620 13

U. S. v. Standard Oil Co.,
332 US 301, 91 L ed. 2067 9

U. S. v. Trans-Missouri Freight Ass'n.,
166 U.S. 290, 41 L ed. 1007 12

Veazey Bank v. Eunno,
8 Wall. 533, 19 L ed. 482 15

Williams v. U. S., 265 F. 2d 214 13

Williamson v. Lee Optical Co.,
348 US 483, 99 L ed. 563 8

Statutes

Civil Rights Acts ..... 10 - 11

La. Constitution:

Art. 12, Secs. 1, 10, 11 ..... 5, 43

Art. 9 Sec. 3 ..... 6, 44

La. Rev. Statutes 42: 76, 77 19

U. S. Code:

Title 18, Sec. 401 14

Title 18, Secs. 1503, 1509 ..... 13, 14

Title 42, Sec. 1985 (2) 13

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ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF LOUISIANA

JURISDICTIONAL STATEMENT

The Appellants, the Legislature of Louisiana, its individual members, and other defendants constituting a Legislative School Committee appeal from a judgment of the United States District Court for the Eastern District of Louisiana entered on March 3, 1961, in the case of *Bush vs. Orleans Parish School Board.* Said judgment was rendered by a statutory three-judge court, and declared certain acts and resolutions of the Louisiana Legislature unconstitutional. The defendants and appellants were enjoined from carrying out any of the provisions of said statutes or implementing them in any way. Appellants submit this statement to show that the Supreme Court has jurisdiction of this appeal, and that substantial questions are presented.

OPINIONS BELOW

The opinion of the statutory three-Judge court, herein appealed, is unreported but a copy of the opinion and the order for a temporary injunction complained of are set forth in Appendix A hereto.

Other opinions rendered in prior proceedings in this same case are reported in: 138 F. Supp. 336, aff'd. 242 F. 2d 156, cert. den. 354 US 121; 163 F. Supp. 701, aff'd. 268 F. 2d 78; 187 F. Supp. 42 188 F. Supp. 916 and 190 F. Supp. 861.

These defendants were involved only in the last two district court opinions cited above.

JURISDICTION

The opinion and decree of the statutory three-Judge Court is appealable to this Court under the express provisions of Title 28 U.S. Code Section 1253.

Notice of appeal from the judgment of the district court, entered on March 3, 1961 was filed in that court on March 30, 1961.

QUESTIONS PRESENTED

The following questions are presented by this appeal:

(1) Whether or not the United States has any right or interest in the subject matter of this action, and whether or not it has any right, through the Department

of Justice, to petition for affirmative injunctive relief, as amicus curiae or otherwise, against these defendants.

(2) Whether or not the United States District Court for the Eastern District of Louisiana has jurisdiction of a suit to restrain the Legislature of Louisiana from exercising its discretionary powers and duties under the Constitution and laws of the state over the creation and abolition of local school boards and over the appointment and removal of state and local officials and employees.

(3) Whether or not the court can inquire into the motives of the Legislature of Louisiana, and issue a temporary injunction against these defendants on the basis of conjecture and speculation, and without any evidence whatever to support the same.

(4) Whether or not Act 5 of the 2nd Extraordinary Session, and Senate Concurrent Resolution No. 7 and Act No. 4 of the 3rd Extraordinary Session of the 1960 Louisiana Legislature are constitutional.

STATUTES INVOLVED

Senate Concurrent Resolution No. 7 and Act No. 4 of the 3rd Extraordinary Session of the 1960 Louisiana Legislature.

Act No. 5 of the 2nd Extraordinary Session of the 1960 Louisiana Legislature.

Article 12, Sections 1, 10 and 11 of the Constitution of Louisiana.

Article 7, Section 56 and Article 9, Section 3 of the Constitution of Louisiana.

The above statutes are set forth in Appendix B hereto.

STATEMENT

The proceeding grows out of a judgment rendered by the United States District Court for the Eastern District of Louisiana, entered on May 16, 1960 in the case of Earl Benjamin Bush et al v. Orleans Parish School Board, requiring the said Board to submit a plan for the desegregation of the public schools of Orleans Parish, Louisiana. The Board having failed to submit a plan the Court ordered desegregation beginning November 14, 1960, with the first grade. This plan was put into operation at the time mentioned.

The present appeal involves three petitions of the United States, as *amicus curiae*, against the Legislature of Louisiana, its members and committees, the Governor and other state officials to declare Act 5 of the 2nd Extraordinary Session and Act 4 and Senate Concurrent Resolution No. 7 of the 3rd Extraordinary Session of the 1960 Louisiana Legislature unconstitutional, and to enjoin the defendants from proceeding under said statutes or making them effective. The United States is the sole and only petitioner in this matter.

The grounds alleged by the United States for its complaint are that these statutes violate Article VI and the 14th Amendment of the United States Constitution and

that, unless the defendants are enjoined, the federal government will suffer immediate and irreparable injury consisting of "the impairment of the integrity of judicial process, the obstruction of the due administration of justice and the deprival of rights under the Constitution and laws of the United States." No particular allegations were made and no proof was offered to support these claims.

Acting under the belief that the State had exclusive jurisdiction over the operation and control of its public schools, and in order to discharge its duties under the State Constitution to provide for the education of the youth of the State (Art. 12, Sections 1, 10 and 11) and to maintain and promote the health, peace, morals, education and general welfare of the people of Louisiana under its police power, the Legislature met in extraordinary session in November, 1960, and passed a number of laws on these subjects which were declared unconstitutional at the instance the Orleans Parish School Board and the individual plaintiffs in the original proceedings herein (188 F. Supp. 916). Among these laws was an Act repealing the Statute by which the Orleans Parish School Board was created.

At this juncture the Court on December 2, 1960. invited the Department of Justice to participate in the case as amicus curiae, and the United States, alone, has initiated this proceeding attacking statutes passed at the 2nd and 3rd Extraordinary Sessions of the 1960 Legislature.

At its 2nd Extraordinary Session of 1960 the Legislature pursuant to its constitutional authority over the public schools passed Act No. 5 designating the Attorney General as the attorney for the Orleans Parish School Board. This action was also authorized by Article 7 of Section 56 of the Louisiana Constitution of 1921 which empowered the Attorney General to take charge of all matters, civil and criminal in which the State has an interest.

The 3rd Extraordinary Session of the 1960 Legislature enacted Senate Concurrent Resolution No. 7 removing James F. Redmond, Orleans Parish Superintendent out of office, pursuant to Article 9, Section 3 of the State Constitution, and also passed Act No. 4 amending and re-enacting Sections 121 through 128 of Title 17 of the Revised Statutes of 1960 providing for the creation of the Orleans Parish School Board, the appointment and election of its members and other matters pertaining thereto.

The lower court held these Statutes unconstitutional and enjoined their implementation by the defendants. The Legislature of Louisiana, its individual members, and the members of its Legislative School Committee prosecute this appeal from that judgment.

The members of the Orleans Parish School Board appointed pursuant to Act No. 5 of the 3rd Extraordinary Session have also appealed. Their appeal has been recently docketed here under the title of *F. Otway Denny, et al v. Earl Benjamin Bush, et als,* No. ..... October

Term, 1960. Other defendants, State officials have also appealed.

THE QUESTIONS ARE SUBSTANTIAL

This proceeding raises questions of great importance respecting the power of the United States to interfere with and control state legislative and executive action respecting matters within the exclusive jurisdiction of a state government, on the mere conjecture that such action will in some unspecified and undefined way obstruct the due administration of justice by a United States Court. These questions relate to:

1. The right or interest of the United States to petition for and secure affirmative injunctive relief, as amicus curiae or otherwise, in a suit brought by private individuals, particularly when no threat or attempt is made to obstruct or interfere with any U. S. Court, or court order or to jeopardize any property or other rights of the United States.

2. The jurisdiction of a federal court to exercise a veto power over legislation enacted by a state legislature concerning matters of local administration including the appointment and removal of local state officials and employees.

3. The right of a federal court to inquire into the motives of a state legislature and thereby enjoin such legislature, its members and committees, the governor and other state officials, on the basis of conjecture and speculation, and without any evidence on the subject.

1. The Alleged Interest of the United States

The complaint of the United States is solely that the implementation of the Acts of the Louisiana Legislature, drawn in question here, will impede, obstruct, and interfere with prior orders of the lower court requiring the desegregation of the Orleans Parish Schools. The affidavits to the three petitions signed by the United States District Attorney state that unless a preliminary injunction be issued restraining and enjoining the defendants from proceeding under the Acts of the Legislature in question, the United States, the individual plaintiffs, and the superintendent of public schools will suffer irreparable injury. There is no allegation in the petitions, no proof in the affidavits, and no proof offered at the hearing as to just how the appointment of a new school board, the dismissal of the Superintendent of Schools, or recognition by the Legislature of the status of the Attorney General as counsel for the school board will, if implemented, do anything more than make a change in the administration of the public schools of Orleans Parish. Whether in view of previous injunctions issued by the Court this legislation is pointless, or constitutes domestic amusement, or is much ado about so little, as the lower court sarcastically suggests, is none of the court's business. The federal courts do not sit in judgment on the sagacity of state lawmakers and have no veto or supervisory power over their lawmaking.(1)

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(1) Beauharnais v. Illinois, 343 US 250, 96 L ed. 919; Harisiades v. Shaughnessy, 342 US 580, 96 L ed. 586; Williamson v. Lee Optical, 348 US 483, 99 L ed. 563.

There is no law which would authorize the federal government to intervene in a case of this kind, or to seek injunctive relief against acts and resolutions of the State Legislature which might, in the opinion of counsel or the court, possibly be used in a way that would hinder the effectuation of federal court decrees. The following statement of a well-known principle was made in the case of *United States v. 1960 Acres of Land*, 54 F. Supp. 867, 872:

> "The United States can appear as a litigant only when, and can act only through, the officials authorized to do so by Congress. . "

This Court announced the same principle in *United States v. Standard Oil Co.*, 332 US 301, 315; 91 L ed. 2067, 2076, thus:

> "When Congress has thought it necessary to take steps to prevent interference with federal funds, property or relations, it has taken positive action to that end. We think it would have done so here, if that had been its desire. This it still may do, of or when it so wishes.
>
> In view of these considerations, exercise of judicial power to establish the new liability not only would be intruding within a field properly within Congress' control and as to a matter concerning which it has seen fit to take no action. . . "

In the hearings before the Senate Committee concerning the proposals made for the Civil Rights Act of 1960, Attorney General Rogers called attention to the fact that the United States had been authorized to seek

injunctions in 49 different acts passed by Congress, but had not been authorized to appear and seek injunctive relief in civil rights cases, and in many cases involving the obstruction of the due administration of justice. These 49 statutes are printed in Part II of the Hearings Before the Subcommittee on the Judiciary, United States Senate, 86th Congress, First Session, pages 1496, et seq.

The Congress has always deemed it necessary to prescribe the cases in which the United States can appear as a litigant, but it has refused on many occasions to authorize the attorney general to appear in court and seek injunctions against violations of the Civil Rights Acts, and against cases involving obstructions to the due administration of justice. The attorney general has recommended to Congress that it confer such authority upon the Department of Justice in the various hearings on the Civil Rights Acts of 1949, 1957 and 1960, and on each occasion Congress has denied this privilege to the Department of Justice.

In the hearings on the Civil Rights Act of 1960 before Subcommittee No. 5 of the Committee on the Judiciary, House of Representatives, 86th Congress, First Session, Attorney General Rogers gave testimony beginning at page 205 of the Report on the Hearings before this Committee. He makes the following statements on page 207 and 208 of the Committee Hearings:

> ". . . If the execution of the decrees of the courts are obstructed by force or threats of force, the Federal Government should have authority to act effectively. . .

> In the Department's study shows that there is doubt as to whether the existing authority of the Federal courts is sufficient to impose effective sanctions against members of mobs - or against others who, by threats or force, willfully prevent, obstruct, impede, or interfere with the exercise of rights or the performance of duties under a school desegregation order of a Federal court. The purpose of this proposal is to remove that doubt.
>
> The relevant obstruction-of-justice statute also appears to be inadequate. . ."

The Civil Rights Act of 1960 did not confer on the federal government authority to act and seek injunctive relief where the decrees of the federal courts are obstructed by force or threats of force. If the Department of Justice needed congressional authority for such purpose, by a greater force of reasoning, the attorney general would need congressional authority to appear in this case and seek injunction against the removal of state officials and employees through an act of the State Legislature pursuant to state constitutional authority.

In Appendix C hereto we have printed those portions of the Legislative History of the Civil Rights Acts of 1957 and 1960 which are appropriate to the subject under discussion in order to show that Congress definitely did not intend to give to the United States the power or authority to intervene as a party litigant in a case between private parties and state officials. The lower court ignored committee reports and resorted to the statements of individual Congressmen made in the Congressional de-

bates on the subject. This court has said that such debates are the weakest evidence of congressional intent.(2)

The lower court also relied on dictum in the case of *Faubus v. United States*, 254 F. 2d 797. That decision is not authority for the proposition that the federal government has the power to seek injunctive relief against alleged obstruction of justice in a suit between private parties and their state officials, for the reason that the plaintiffs themselves petitioned for an injuction in that case. Similarly *Dick v. Marr*, 197 F. 498 and *Root Refining Co. v. Universal Oil Products*, 169 F. 2d 514, cited by the lower court are not appropriate because these cases did not raise the question here presented and involved only the right of a court of equity to determine whether or not a fraud had been practiced on it by one of the litigants.

Absent express statutory authority, it is only in cases where the United States has a property interest, or where some special duty has been imposed upon it by statute, or where fraud has been practiced in securing a patent or some sort of privilege from it, that the United States has been permitted to sue for injunctive process.

Neither the passage of the acts by the Legislature of Louisiana, nor their implementation, constitute an obstruction of justice. Cases dealing with obstruction of justice hold that only those acts specified in 18 USC 1503

(2) United States v. Trans-Missouri Freight Ass'n., 166 US 290, 318, 41 L. ed. 1007; Duplex Printing Press Co. v. Deering, 254 US 443, 474, 65 L ed. 349.

fit the definition of "obstruction of justice."(3) In *Haili v. United States* the Ninth Circuit Court held:

> "... A reference to the text of the section which appears in footnote 1 supra, shows that it lists a number of specific acts which are prohibited ... It then concludes with the general provisions: '***or corruptly or by threats or force, or by any threatening letter or communication, influences, obstructs, or impedes, or endeavors to influence, obstruct, or impede, the due administration of justice, shall be fined ***'
>
> .. Under the rule of ejusdem generis, the general words which follow the specific words in the enumeration of prohibited acts in the section here involved must be construed to embrace only acts similar in nature to those acts enumerated by the preceding specific words. See Sutherland, Statutory Construction, 3d ed. §§ 4908 - 4909. . . . ."

There are three acts of Congress which deal with interference with, or obstruction to, "the due administration of justice". These are 18 USC 1503, 18 USC 1509 and 42 USC 1985 (2) and they specify the acts which constitute such an interference. Being laws in pari materiae they are construed together.(4) None of them include acts or resolutions of a state legislature appointing a school board or addressing a state official out of office.

Furthermore, the Congress has specifically provided for remedies against intereference with court orders by

(3) Haili v. United States, 260 F 2d. 744 (CA9, 1958); Williams v. United States, 265 F. 2d 214, 217 (CA 9, 1959); U. S. v. Scoratow, 137 F. Supp. 620 (W.D. Pa.).

(4) Pickering v. Penn. R. R. Co. 151 F. 2d 240.

criminal contempt proceedings (18 USC 401) and by fine and imprisonment (18 USC 1503, 1509). 18 USC 1509 makes it a crime to obstruct or interfere with the exercise of rights under a court order or decree by threats or force and provides that "no injunctive relief against the conduct made criminal by this section shall be denied on the ground that such conduct is a crime." However, this statute confers no authority on the Attorney General to bring injunctive proceedings in the name of the United States. Furthermore, this Section 1509, like Section 1503, applies only where threats or force are used, and no threats or force were used by the defendants here.

This court has said that, where a statute limits a thing to be done to a particular mode it includes the negative to any other mode.(5) It therefore follows that since Congress has prescribed the modes of redress and the remedies for obstruction of court orders, these modes are exclusive. Injunctive procedure by the Department of Justice is not one of the remedies provided.

These questions are substantial and important because of their implications in our dual system of government. This Court has wisely said that the federal judiciary should exercise great wariness where the problem implicates a phase of federalism and involves striking a balance between national and state authority in a sensitive area of government.(6)

(5) Botany Worsted Mills v. U. S., 278 US 282, 289; 73 L ed. 379, 385; Raleigh & G. R. Co. v. Reid, 13 Wall 269, 270; 20 L ed. 570; Continental Cas. Co. v. U. S., 314 US 527, 533; 86 L ed. 427, 431.

(6) Palmer v. Massachusetts, 308 US 79, 84 L ed. 93.

2. Federal Courts have no veto power over State legislation concerning matters of local administration.

The lower court by enjoining acts of the Legislature appointing new school board members, dismissing a school superintendent, and designating the Attorney General of Louisiana as counsel for the Orleans Parish School Board, has invaded a sphere of local administration confided to the State by its own Constitution and laws as well as the Constitution of the United States. Since these laws do not interfere with any court order or threaten to do so, and do not deny constitutional rights to anyone, the federal courts have no right to veto them for any reason. That is, in effect, what the lower court has done here by means of a declaratory judgment and an injunction. In doing so it has done violence to many principles enunciated by this court.

Your Honors have said that the matter of control over the officers of the State is exclusively within the province of the state free from interference by the United States.(7) This court has also stated that the judicial branch of the government has no general supervision over legislation, and the courts cannot review or control the discretion of the Legislature as to matters within its province.(8)

Another important principle here involved is the rule that the legislative power of a state, except so far as

(7) Parker v. Brown, 317 US 341, 87 L ed. 315; Taylor v. Beckham, 178 US 548, 44 L ed. 1187.

(8) U. S. v. Darby, 312 US 100, 85 L ed. 609; Veazey Bank v. Funno, 8 Wall. 533, 548; 19 L. ed. 482.

restrained by its own constitution, is at all times absolute with respect to all offices within its reach. It may at its pleasure create or abolish them or remove their incumbents at will, as the Legislature of Louisiana has done in this case.(9)

This court has definitely stated that legislative action cannot be interfered with by injunction. In *McChord v. L. & N. R. Co.*, 183 US 483, 46 L ed. 289, the lower court enjoined the railroad commission of Kentucky from carrying out the provisions of a statute on the grounds that it violated the 14th Amendment. This court reversed, saying, (183 US 495-6):

> ". . . the general rule is that legislative action cannot be interfered with by injunction.
>
> ". . . The parties seeking to execute the invalid act can be reached by the courts while the legislative body of the state or of the municipality, in the exercise of its legislative discretion, is beyond their jurisdiction. The fact that in either case the legislative action threatened my be in disregard of constitutional restraints, and impair the obligation of a contract, as alleged in this case, does not affect the question. It is legislative discretion which is exercised, and that discretion, whether rightfully or wrongfully exercised, is not subject to interference by the judiciary."(10)

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(9) Higginbotham v. Baton Rouge, 306 US 535, 538; 83 L ed. 968, 971; Keim v. U. S., 177 US 290, 44 L ed. 774; Newton v. Mahoning County, 100 US 548, 559; 25 L ed. 710, 711.

(10) Other cases in point are: New Orleans Waterworks v. N. O., 164 US 471, 41 L ed. 518; Mississippi v. Johnson, 71 US 475, 18 L ed. 437.

Furthermore the decision of the lower court is in conflict with this courts rulings that injunctions cannot be issued against anticipated wrongs.

This proceeding is based entirely on the plaintiffs' surmise that the defendants intend to improperly or unlawfully carry out the duties intrusted to them by the Legislature. No threat of illegal action has been made, and none has been taken. It is a time honored principle that under these circumstances the implementation of the legislative acts in question cannot be enjoined because of an anticipation of improper or invalid action in their administration.

In *Continental Baking Co. v. Woodring*, 286 US 352, 369, 76 L ed. 1155, 1165, the court said:

> ". . appellants had no right to resort to equity merely because of an anticipation of improper or invalid action in administration. . . ."

In the early case of *Stone v. Farmers Loan & Trust Co.*, 116 US 307, 335, 29 L ed. 636, 645, the court stated:

> ". . . As yet the commissioners have done nothing. There is certainly much they may do in regulating charges within the State which will not be in conflict with the Constitution of the United States. It is to be presumed they will always act within the limits of their constitutional authority. It will be time enough to consider what may be done to prevent it when they attempt to go beyond."

The district court therefore erred in entertaining the petition of the United States on the basis of imaginary wrongs and on suspicion of anticipated unlawful conduct.

See also: *A. F. of L. v. Watson*, 327 US 582, 593, 90 L ed. 873, 880.

3. The Motives of the Legislature

The Court below disregarded the many rulings of this court that the judiciary cannot inquire into the motives of the Legislature, or its members, in determining the validity of statutory enactments.(11)

The decree of the lower court is based on its own surmises concerning the motives that prompted the Legislature in passing these statutes. Act 5 of the 2nd Extraordinary Session and Act 4 of the 3rd Extraordinary Session do not state the reasons for their passage nor the motives of the Legislature in enacting them. Senate Concurrent Resolution No. 7 of the 3rd Extraordinary Session does state in one of its preambles that the Superintendent of Public Schools refused to recognize the prerogatives and the powers of the Legislature and that there was reasonable cause for his removal from office. If the Legislature has unlawfully removed the Superintendent from office he has his remedies under state laws to be reinstated. If the original school board believes that it was unlawfully removed and superseded by the board named in Act 4, or that the Attorney General has no right to be its legal representative, the state laws provide remedies for it or its members to pursue in the state

(11) New Orleans v. Warner, 175 US 120, 145, 146; 44 L ed. 96, 108; Calder v. Michigan, 218 US 591, 598; 54 L ed. 1163, 1167; Arizona v. California, 283 US 423, 455; 75 L ed. 1154; Barenblatt v. U. S., 360 US 109, 132, 3 L ed. 2d 1115, 1132.

courts.[12] In view of this court's rulings that a state may at its pleasure create or abolish state offices, and remove their incumbents at will, the district court is usurping a power it does not possess when it strikes down legislative action in this field of reserved and absolute power.

Even if the court could inquire into the Legislature's motives, and if it were conceded that the Legislature had improper motives in passing these statutes, this fact would not make these acts invalid if they are reasonably designed to serve some lawful purpose.[13]

The lawful purpose to be served is the discharge by the Legislature of its duties and responsibilities under Article 12 of the Louisiana Constitution to provide for the education of the youth of the state. This it cannot do without the cooperation of the local school officials.

The opinion of the lower court attacks the good faith of the Legislature and excoriates the "irresponsible conduct on the part of some Louisiana officials." It then goes on to draw up a bill of particulars on the subject covering past actions of the Louisiana government. All of this reflects an intemperate rather than a judicial attitude on the subject. While it is true that Louisiana has endeavored to avoid the calamity of forced racial

(12) La. Rev. Statutes 42:76 and 42:77 gives a right of action to any person demanding possession of a public office against any person claiming or exercising the functions of the office.

(13) Hampton Jr. & Co. v. U. S., 276 US 394, 412; 72 L ed. 624, 631; Stephenson v. Binford, 287 US 251, 276; 77 L ed. 288, 301; Ellis v. U. S., 206 US 246, 256; 51 L ed. 1047, 1052.

integration, in the honest belief that it will do immeasurable and irreparable injury to both races, the state officials and legislators have only used means which they believed to be justified by the Constitution and laws of the state and of the United States. Whenever the Court of last resort has ruled their actions to be illegal they have not defied the courts nor attempted to substitute force for law. Because an Act of Interposition was passed at the 1st Extraordinary Session of the Legislature, the lower court seems to believe that the Legislature is unable to pass a valid act concerning its local affairs, and this in spite of the fact that no effort or threat to enforce the Act of Interposition or any other statute has been made since they were ruled out by the courts.

If the federal courts can review and supervise legislation by the state, and interfere with the local operation of Louisiana schools so as to name or rename the local officials who operate them, simply because the 14th Amendment is involved, then that amendment does very definitely alter the basic relations between the federal government and the states, despite this courts ruling in *Screws v. United States*, 325 US 109, 89 L ed. 1506:

> "The Fourteenth Amendment did not alter the basic relations between the States and the National government."

And the same is true with reference to your Honors pronouncement in *Stefanelli v. Minard*, 342 US 117, 96 L ed. 138:

"Only last term we reiterated our conviction that the Civil Rights Act 'was not intended to be used to centralize power so as to upset the federal system.'"

It is highly important from a local as well as a national viewpoint that the states be "in their sphere as independent of the federal government as that government, within its sphere, is independent of the states." *Brush v. Commissioner of Internal Revenue*, 300 US 352, 81 L ed. 691. Otherwise our present form of dual government cannot endure.

Respectfully submitted,

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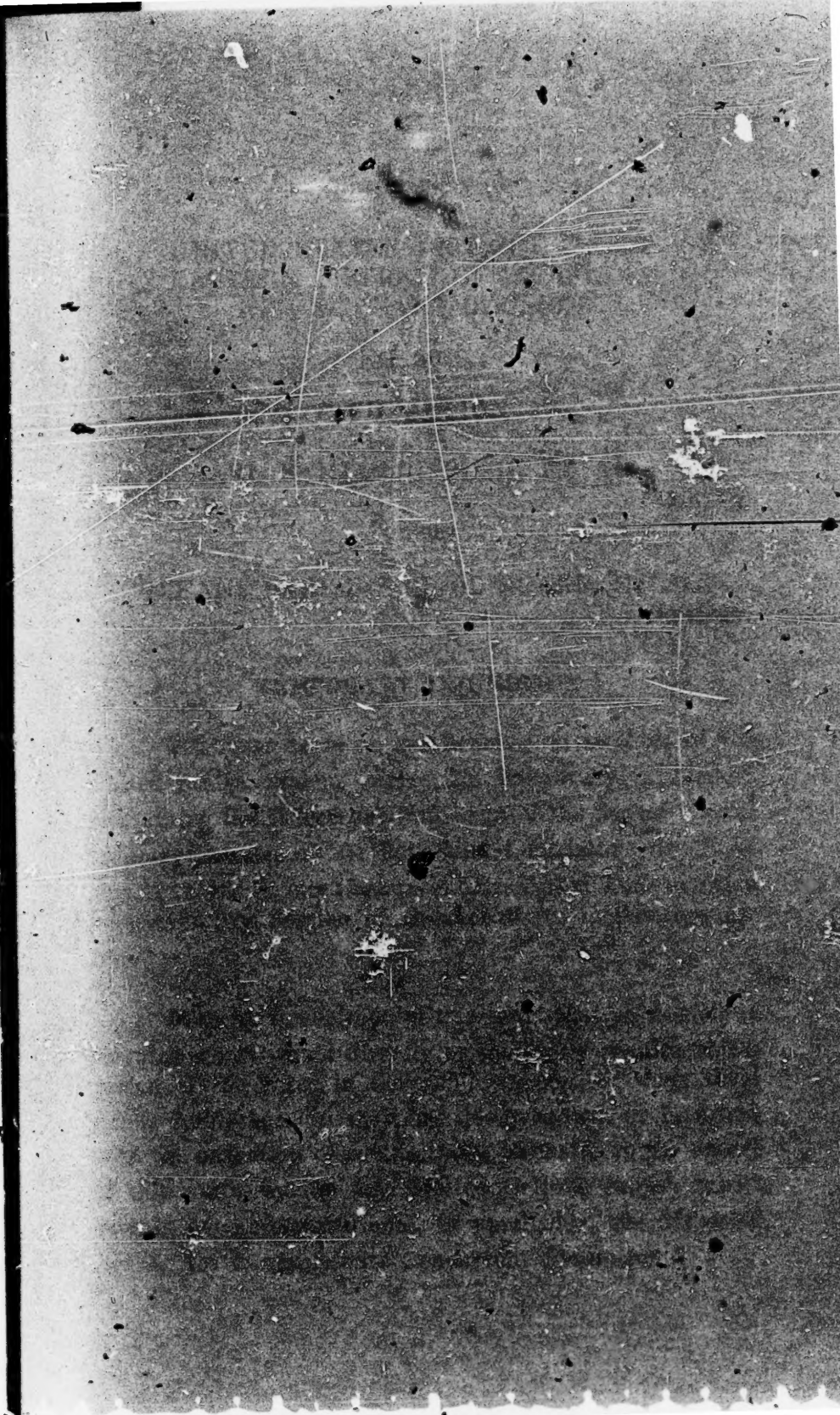
CERTIFICATE

I, W. Scott Wilkinson, one of the attorneys for Defendants-Appellants herein, and a member of the Supreme Court of the United States, do hereby certify that on the ..... of May, 1961, I served copies of the foregoing Jurisdictional Statement on all parties in this cause, by mailing a copy in a duly addressed envelope, with postage paid to counsel of record for said parties.

This ..... day of May, 1961.

.....

Of Counsel for Defendants-Appellants



APPENDIX "A"

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA
NEW ORLEANS DIVISION

NO. 3630

CIVIL ACTION

EARL BENJAMIN BUSH, ET AL.,
Plaintiffs

versus

ORLEANS PARISH SCHOOL BOARD, ET AL.,
Defendants

TEMPORARY INJUNCTION

This case came on for hearing on motions of the United States, amicus curiae, for temporary injunction, restraining the enforcement of Act 5 of the Second Extraordinary Session of the Louisiana Legislature for 1960, and Act 4 and Senate Concurrent Resolution 7 of the Third Extraordinary Session of the Louisiana Legislature for 1960.

It being the opinion of this court that all Louisiana statutes which would directly or indirectly require segregation of the races in the public schools, or deny them public funds because they are desegregated, or interfere with the operation of such schools, pursuant to the orders of this court, by the duly elected Orleans Parish School Board, are unconstitutional, in particular, the aforesaid Act 5, Act 4, and Senate Concurrent Resolution 7;

IT IS ORDERED that the Honorable Jimmie H. Davis, Governor of Louisiana, the Honorable Clarence C. Aycock, Lieutenant Governor of Louisiana, the Honorable Jack P. F. Gremillion, Attorney General of the State of Louisiana, the Legislature of the State of Louisiana and the individual members thereof, Shelby M. Jackson, State Superintendent of Education, the Orleans Parish School Board, Lloyd J. Rittiner, Louis C. Riecke, Matthew R. Sutherland, Theodore H. Shepherd, Jr. and Emile A. Wagner, Jr., the members thereof, James F. Redmond, Superintendent of Schools for the Orleans Parish School Board, A. P. Tugwell, Treasurer of the State of Louisiana, Roy R. Theriot, State Comptroller, the Louisiana State Board of Education and the individual members thereof, Paul B. Habans, Gerald J. Gallinghouse, David B. Gertler, Edward F. L. Breton, Charles Deichmann, Risley C. Triche, P. P. Branton, Welborn Jack, Vial Deloney, William Cleveland, E. W. Gravolet, F. Otway Denny, Edward J. Penedo, and John Singreen, their successors, agents, and representatives, and all other persons who are acting or may act in concert with them, be, and they are hereby, restrained, enjoined and prohibited from enforcing or seeking to enforce by any means the provisions of Act 5 of the Second Extraordinary Session of the Louisiana Legislature for 1960, and Act 4 and Senate Concurrent Resolution 7 of the Third Extraordinary Session of the Louisiana Legislature for 1960, and from otherwise interfering in any way with the operation of the public schools for the Parish of Orleans by the duly elected Orleans Parish School Board, pursuant to the orders of this court.

IT IS FURTHER ORDERED that copies of this temporary injunction shall be served forthwith upon each of the defendants named herein.

IT IS FURTHER ORDERED that copies of this temporary injunction shall be served forthwith on the Louisiana Sovereignty Commission, through its chairman, and on the Joint Legislative Committee on Un-American Activities of the Louisiana Legislature, through its chairman.

Inasmuch as this temporary injunction is issued on the motions of the United States, no bond is required. 28 U.S.C. §2408.

.....
Richard T. Rives, Judge
United States Court of Appeals

.....
Herbert W. Christenberry, Chief Judge
United States District Court

.....
J. Skelly Wright, Judge
United States District Court

Issued March 3, 1961
at New Orleans, Louisiana

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA
NEW ORLEANS DIVISION

No. 3630

CIVIL ACTION

EARL BENJAMIN BUSH, et al.
Plaintiffs

versus

ORLEANS PARISH SCHOOL BOARD, et al.
Defendants

RIVES, Circuit Judge, and CHRISTENBERRY and WRIGHT, District Judges:

Once again,(1) irresponsible conduct on the part of some Louisiana officials compels us to the unpleasant but necessary task of issuing further injunctions. As

(1) The Orleans Parish school desegregation controversy has been in the federal courts for more than eight years. In 1954, the state adopted a constitutional amendment and two segregation statutes. The admendment and Act 555 purported to re-establish the existing state law requiring segregated schools. Act 556 provided for assignment of pupils by the school superintendent. On February 15, 1956, this court held that both the amendment and the two statutes were invalid. The court issued a decree enjoining the School Board, "its agents, its servants, its employees, their successors in office, and those in concert with them who shall receive notice of this order" from requiring and permitting segregation in the New Orleans schools, *Bush v. Orleans Parish School Board*, 138 F. Supp. 337, aff'd, 242 F. 2d 156, cert. denied, 354 U. S. 921.

Not only was there no compliance with that order, but immediately thereafter the Legislature produced a new package of laws, in particular Act 319 (1956) which pur-

before, the campaign is aimed at the duly elected Orleans Parish School Board which, in good faith, continues to comply with the orders of this court requiring desegregation of the public schools of New Orleans. A further effort is made to remove the entire Board and replace it with a new group appointed by the Legislature. Act 4, 3rd Ex. Sess. 1960. And, in case the frontal assault should

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ported to "freeze" the existing racial status of public schools in Orleans Parish and to reserve to the Legislature the power of racial reclassification of schools. On July 1, 1958, this court refused to accept the School Board's contention that Act 319 had relieved the Board of its responsibility to obey the desegregation order. In the words of the court, "any legal artifice, however cleverly contrived, which would circumvent this ruling [of the Supreme Court, in *Brown v. Board of Education*, 347 U.S. 483] and others predicated on it, is unconstitutional on its face. Such an artifice is the statute in suit." *Bush v. Orleans Parish School Board*, 163 F. Supp. 701 aff'd, 268 F. 2d 78. See also, *Lane v. Wilson*, 307 U.S. 268.

Nevertheless, the Legislature continued to contrive circumventive artifices.

In 1958 a third group of segregation laws was enacted, including Act 256, which empowered the Governor to close any school under court order to desegregate, as well as any other school in the system. In the first court test of this law it was struck down as unconstitutional by this court on August 27, 1960. *Bush v. Orleans Parish School Board*, 187 F. Supp. 42.

On July 15, 1959, he court ordered the New Orleans School Board to present a plan for desegregation, *Bush v. Orleans Parish School Board*, No. 3630, but there was no compliance. Therefore, on May 16, 1960, the court itself formulated a plan and ordered desegregation to begin with the first grade level in the fall of 1960.

For the fourth time, in its 1960 session, the Legislature produced a packet of segregation measures, this time to prevent compliance with the order of May 16, 1960. Four of these 1960 measures—Acts 333, 495, 496 and 542—and the three earlier acts referred to above—Act 555 of 1954, Act 319 of 1956 and Act 256 of 1958—were

fail, a series of flanking maneuvers has been initiated. Among these are the Secretary of State's refusal to certify the recent re-election of one Board member, a resolution purportedly "addressing out of office" the superintendent of schools elected by the present Board, Sen. Conc. Res. 7, 3d Ex. Sess. 1960, and a statute which seeks to deprive the Board of its attorney and force upon it the State Attorney General, Act 5, 2d Ex. Sess. 1960.

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declared unconstitutional by a three-judge court on August 27, 1960, in the combined cases of *Bush v. Orleans Parish School Board* and *Williams v. Davis*, and their enforcement by "the Honorable Jimmie H. Davis, Governor of the State of Louisiana, and all those persons acting in concert with him, or at his direction, including the defendant, James F. Redmond," was enjoined. *Bush v. Orleans Parish School Board*, 187 F. Supp. 42, 45. At the same time, the effective date of the desegregation order was postponed to November 14, 1960. On this date the School Board began good faith compliance with the court's order.

At the First Extraordinary Session of 1960, however, the Louisiana Legislature adopted a new series of measures designed to thwart the orders of this court. Even after integration was an accomplished fact, the Legislature sought to defeat it. On November 30, 1960, this court held Acts numbered 2, 10 through 14, and 16 through 23, as well as House Concurrent Resolutions Nos. 10, 17, 18, 19 and 23, unconstitutional, *Bush v. Orleans Parish School Board*, 188 F. Supp. 916.

Undeterred, in its Second Extraordinary Session for 1960, the Louisiana Legislature passed further measures to frustrate the Orleans Parish School Board in its effort to comply with the orders of the court. On December 21, 1960, Act 2 and House Concurrent Resolutions 2, 23 and 28 of this session were declared unconstitutional and the enforcement of Act 5, now before us, was temporarily restrained. *Bush v. Orleans Parish School Board*, F. Supp. (Dec. 21, 1960)

The Third Extraordinary Session produced the measures under consideration here. A Fourth Special Session was abortive, but, at this writing, the Louisiana Legislature has just adjourned from its Fifth Extraordinary Session, the product of which has yet to be evaluated.

In view of our reiterated injunction expressly prohibiting the Legislature, the Governor, the Attorney General and other state officials from "interfering in any way with the administration of the public schools for Orleans Parish by the Orleans Parish School Board,"(2) it is difficult to understand these recent actions which so plainly violate the orders of the court. Certainly Louisiana's legislators cannot seriously have expected us to condone new devices for re-establishing an unjust racial discrimination which the highest court in the land has repeatedly condemned as unconstitutional. On the other hand, we are reluctant to assume that this is defiance merely for the sake of defiance, for it is unthinkable that, without even the excuse of possible success, a state would deliberately expose its citizenry to the unseemly spectacle of lawgivers, sworn to uphold the law, openly flouting the law.

Totally ignoring our previous finding to the contrary, they now insist that interference with the elected school board of Orleans Parish has nothing whatever to do with resistance to integration of the public schools of Orleans Parish. We are assured that the substitute school board, the new superintendent and the new school board attorney will all be bound by the outstanding orders of this court, and it is argued that a harmless change in personnel cannot affect the implementation of constitutional rights, hence, does not concern the federal tribunals.

(2) See *Bush v. Orleans Parish School Board*, 187 F. Supp. 42, 45; temporary injunction issued November 30, 1960, on opinion reported at 188 F. Supp. 916; temporary injunction issued December 21, 1960.

In short, we are told that the new legislation is pointless, or, at most, constitutes an innocent domestic amusement.

But, even if we were so disposed, we could not ignore the background of the new legislation. These are not the first blooms of a new spring. This litigation is now in its ninth year and the record is a chronology of delay, evasion, obstruction, defiance and reprisal. Nor is the state administration or the legislature which sponsored the measures under consideration a faceless new body. At the behest of the same Governor, the same legislators have recently concluded an unprecedented Fifth Special Session, and the pattern of their labors is more than familiar. Without attending all they have said and done, we must at least notice such of their past actions as have come to our judicial attention, and these are enough to make up a complete catalog of resistance to constitutional authority. No one needs reminding how many efforts have been made in recent weeks alone to oust the elected school board of New Orleans notwithstanding the orders of this court. Against this history, who will say, without strong evidence, that Louisiana's officials have suffered a change of heart and that the measures now before us are harmless details of internal administration?

But it is not only the guilty past that condemns these recent acts. The very circumstances of their birth robbed them of innocence. Indeed, if there were no ulterior motive, no larger purpose to be served, why so much ado about so little? Is such a triviality as the attorney for a

single local school board, even a change in the personnel of the board itself, a matter of sufficient gravity and urgency to require a special session of the state legislature?(3) Are these causes for which a Governor dispenses with usual delays and certifies the necessity for "emergency" legislation?(4) Do such questions normally provoke the highest state court to short-cut appellate procedures by exercising its extraordinary "supervisory" jurisdiction?(5) Through its official declarations the government of Louisiana has itself exposed the new legislation.

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(3) Under the Louisiana Constitution, Art. 5, §14, the Governor may convene the Legislature in special session "on extraordinary occasions." Of the legislative measures now before us, one was adopted at the Second Extraordinary Session of 1960 (Act 5), and two at the Third Extraordinary Session of 1960 (Act 4 and Sen. Conc. Res. 7).

(4) According to the endorsements thereon, Act 5, 2d Ex. Sess. 1960, was certified as emergency thereon; Act 5, 2d Ex. Sess. 1960, was certified as emergency legislation by the Governor on December 12, 1960, three days before its passage, and Act 4, 3d Ex. Sess. 1960, was so certified on January 12, 1961, the day of passage. By virtue of this certification both measures become immediately effective upon approval by the Governor; instead of 20 days after the end of the session in which each was adopted. See La. Const., Art. 3, §27. The measure purporting to address out of office the superintendent of the Orleans Parish schools (S. Conc. Res. 7, 3d Ex. Sess. 1960), being a resolution, presumably became effective when concurred in by the House of Representatives without the necessity of such a certificate.

(5) On December 3, 1960, a judge of the Nineteenth Judicial District Court of Louisiana, without a hearing granted a restraining order directed to the Governor and other state officers enjoining them from enforcing Act 2 of the Second Extraordinary Session of 1960, the predecessor of the present measure creating a new school board for Orleans Parish. Before a hearing on the motion for preliminary injunction could be had, and bypassing the Court of Appeals, the Louisiana Supreme

No further proof is needed, but there is more. As already noted in our earlier decision[6] granting a temporary restraining order against its enforcement, the real object of Act 5 of the Second Special Session was dramatically revealed by the Attorney General himself when, moments after relieving the School Board's regular attorney, he sought to withdraw pending motions by the Board without even consulting his client. The vice of the more recent measures is disclosed in the text itself. Thus, as a premise to establishing a new legislatively appointed board, Act 4 of the Third Special Session pointedly recites earlier acts and resolutions purporting to abolish the elected board which this court has already ruled unconstitutional. And the resolution ousting the superintendent of the New Orleans schools; Sen. Conc. Res. 7, 3d Ex. Sess. 1960, assigns as the sole "reasonable cause" for removal[7] his failure, in obedience to the orders of the

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Court granted certiorari, and, in less than two weeks, issued its decree reversing the district judge. In its opinion the Louisiana Court noted that it "will not ordinarily exercise its supervisory jurisdiction in cases such as this," but did so here "because of the statewide and extraordinary public interest and importance" of the matter. *Singlemann v. Davis*, La. , 125 So. 2d 414, 415.

(6) See *Bush v. Orleans Parish School Board*, F. Supp. (Dec. 21, 1960).

(7) The Louisiana Constitution, Art. 9, § 3, permits the Legislature to "address" out of office any "officer" for "reasonable cause." It seems doubtful that the parish superintendent of schools is an "officer" within this provision. *State v. Stanley*, 173 La. 807, 138 So. 845. On the contrary, it appears that he can only be removed by the board which elected him for the causes specified in La. R. S. 17:54, and, then, only after hearing. See *Bourgeois v. Orleans Parish School Board*, 219 La. 512, 53 So. 2d 251. Moreover, even if the super-

court, to recognize these invalid laws. Similarly, the only excuse offered by the Secretary of State for his refusal to certify the re-election of Mr. Sutherland to the Orleans Parish School Board is the claim that, under the same unconstitutional statutes, the office was abolished.

The pattern is obvious. The ultimate goal remains to block desegregation of the public schools and frustrate the enjoyment of constitutional rights. The method is to wrest control of the New Orleans schools from the elected board and, incidentally, to punish the members of that board and its faithful employees for complying with the mandate of the court. But, since our orders stand in the way of that design, the immediate effect of the measures is to defy the authority of this court.

In the circumstances, the United States, as amicus curiae, actively intervened and is the moving party on the applications now before us. Since the immediate effect of the recent legislative measures is to frustrate orders of a court of the United States and the primary reason for enjoining those acts is to vindicate the authority of that court, this seems altogether appropriate.(8) Nevertheless,

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intendent is subject to removal by the Legislature, it might be questioned whether obedience to the orders of a court of the United States constitutes a *"reasonable"* cause under the Louisiana Constitution. In the circumstances, however, it is unnecessary to decide these matters of local law.

(8) This is not to say that the original plaintiffs or the Orleans Parish School Board, as cross-claimants, would not have had standing to seek the relief requested here by the United States. On the contrary, since the ultimate goal of the measures under consideration is to deny the plaintiffs enjoyment of their constitutional rights,

defendants strenuously object, claiming that the government has no interest in this private litigation and should not be permitted to stand in for the original plaintiffs. In view of the compelling precedent in the parallel case of *Faubus v. United States*, 8 Cir., 254 F. 2d 797,(9) we might reject the objection summarily, especially since it is, at best, a delaying tactic.(10) But we deem it important to state unequivocally the right of the United States to appear in these proceedings because it involves a principle vital to the effective administration of justice.

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they might properly have brought these applications. And the School Board, as the victim of these measures of reprisal and as the guardian of the school children of the community, also has sufficient interest to ask for these injunctions. See *Brewer v. Hoxie School District No. 46*, 8 Cir., 238 F. 2d 91. But this in no way contradicts the distinct interest of the United States in protecting the integrity of its courts.

(9) Two reasons are given why *Faubus* should not be deemed a binding precedent, the first being that the plaintiffs there had filed an application identical to that of the United States, so that discussion of the government's right, as amicus curiae, to obtain injunctive relief was mere obiter dicta; the second, that the legislative history of the Civil Rights Act of 1957 was not brought to the court's attention in that case. The first point has some merit, but the fact is that, whether required to do so or not, the Court of Appeals did rule on the propriety of the government's participation, and that opinion, even if dicta, carries some weight. As to the other distinction assuming the allegation to be correct, we must assume that the Court of Appeals would have found the argument based on the history of the Civil Rights Act no more persuasive than we have.

(10) As just stated, note 8 supra, either the original plaintiffs or the Orleans Parish School Board might properly have brought these applications. Hence, even if we were to dismiss the present petitions, the next day the same relief could be requested by another party and the defendants would have gained nothing.

The arguments advanced by the state's representatives reveal a complete misconception of the government's role. Accordingly, it is important to emphasize *when, how* and for *what reason* the United States entered the case. On November 25, 1960, the court invited the Attorney General and the United States Attorney to participate by the following order:

> IT IS ORDERED that the United States be, and it is hereby, requested and authorized to appear in these proceedings as *amicus curiae*, by and through the Attorney General of the United States and the United States Attorney for the Eastern District of Louisiana, to accord the court the benefit of its views and recommendations with the right to submit to the court pleadings, evidence, arguments and briefs, and to initiate such further proceedings as may be appropriate, in order to maintain and preserve the due administration of justice and the integrity of the judicial processes of the United States.

The date is significant. The United States intervened long after this court had finally declared plaintiffs' right to attend desegregated public schools, and after the time set for the practical implementation of that constitutional right. The merits had been adjudicated and the only matter remaining was the enforcement of the court's injunction. It was only when the Governor, the Legislature, and other officials of the State of Louisiana attempted to interpose the power and prestige of the state in a massive effort to frustrate the court's decrees that we called upon the United States as a friend of the court. It should also be stressed that the government appeared *at the*

court's request. The Justice Department was not intervening to protect a special interest of its own. Nor was it to champion the rights of the plaintiffs or defend the harassed School Board. It came in, by invitation, to aid the court in the effectuation of its judgment, "to maintain and preserve the due administration of justice and the integrity of the judicial processes of the United States."

Against this background all defendant's authorities are irrelevant. In the present context it is immaterial that in adopting the Civil Right Acts of 1957 and 1960 Congress failed to authorize the Attorney General to initiate desegregation proceedings.(11) That is not the government's role here. In the first place, this case was in the courts, at the instigation of private litigants, for more than eight years when the United States made its appearance, so that the Justice Department could hardly be said to have "initiated" the proceedings. Moreover, even now, the Attorney General does not seek to advise the court on the merits, for the case on the merits is long since closed. As we have said, the government entered the case only to vindicate the authority of the court. Nothing in the history of the recent civil rights legislation indicates that Congress sought to withdraw the right of the United States to intervene under these circumstances. On the contrary, the Senate debates on the Civil Rights Act

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(11) See "Part III" of H.R. 6127, 85th Cong., 1st Sess., as originally introduced, rejected by the Senate. Cong. Rec., 85th Cong., 1st Sess., 11378; and "Title III" of H.R. 3147, 86th Cong., 2d Sess., deleted by the House Judiciary Committee. H.R. Report No. 956, in 1960 U.S. Cong. & Adm. News, No. 6, pp. 25, 37-38, 41.

of 1957 show the opponents of "Part III" of the original bill which would have authorized the Attorney General to file desegregation suits expressly recognized the right of the United States to intervene in such litigation to preserve the integrity of its courts.(12) Despite the rejection of "Part III," that inherent right would remain. Invoking this reserved power, the Attorney General intervened in the *Faubus* case to protect the judicial process. Yet, in considering the Civil Rights Act of 1960, though fully aware of the Little Rock precedent, Congress did nothing to withdraw from the United States its right to intervene in similar cases. Apparently it preferred this method of enforcing court orders to the use of troops.

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(12) In the debate in the Senate, opponents of the bill pointed out that Section 121 of Part III would permit the Attorney General to bring an action at government expense to enforce an individual's rights whether or not that person wished the Attorney General to bring such an action (Sen. Russell, 103 Cong. Rec. 9711-2; Sen. Hill, 103 id. 10230; Sen. Ervin, 103 id. 10087, 10090, 10233; Sen. Thurmond, 103 id. 10239; Sen Ellender, 103 id. 10454-5; Sen. McClellan, 103 id. 10468; Sen. Byrd, 103 id. 10673; see also, Sen. Carroll, 103 id. 10090). But they recognized the distinction between the government's bringing an action to enforce a private individual's civil rights and the inherent right of a government "to use necessary power [specifically, the injunctive process] for self-protection" (Sen. Hill, 103 id. 10227; see also, Sen. Ellender, 103 id. 10454). Senator Stennis pointed out that injunction proceedings to prevent obstructions to federal court orders, as illustrated by the *Kasper* contempt case (see *Kasper v. Brittain*, 6 Cir., 245 F. 2d 92), were not the kind of proceedings to which the opponents of Section 121 had reference, "and it is most important that this difference be emphasized" (103 id. 10073). Senators Kefauver and Cooper likewise distinguished the *Kasper* case (103 id. 10823, 10918).

Nor is there merit to the argument that, because the United States is styled an "amicus curiae," it cannot ask for affirmative relief. It is true that ordinarily an amicus curiae merely tenders a brief advising the court on the law applicable to the case. But, as shown, in these proceedings the United States is no ordinary amicus. Whether "amicus curiae" is the proper title is a quibble over labels. However, we think it singularly appropriate here, since the role of the United States in this proceeding is more truly that of a friend of the court than is often the case with so-called "amici," who are rather friends of one party or the other. Nor is this designation under like circumstances without precedent. *Faubus v. United States*, supra; *A. B. Dick Co. v. Marr*, 2 Cir., 197 F. 2d 498; *Root Refining Co. v. Universal Oil Products Co.*, 3 Cir., 169 F. 2d 514; *Helmbright v. John A. Gebelein, Inc.*, D. Md., 19 F. Supp. 621.

The real objection is to the participation of the United States in any guise, whether as party plaintiff, intervenor, or amicus. It is said that the government has no "interest." Of course, it has no proprietary or financial interest to protect.(13) And, in view of the history of the recent Civil Rights Acts, perhaps it cannot voice its obvious interest in securing for all citizens the enjoyment of constitutional rights.(14) But that does not mean that

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(13) Needless to say, lack of financial interest does not disqualify the United States as a party plaintiff. *In re Debs*, 158 U.S. 564, 583-587.

(14) There is some doubt whether the mere failure of Congress to expressly authorize the Attorney General to prosecute desegregation suits strips him of that power, if the United States has an interest in the matter. See

the Justice Department of the United States can have nothing to do with the administration of justice or that it must remain indifferent when the judgments of federal courts are sought to be subverted by state action. The interest of the government here is the same as that which justifies its prosecution for obstruction of court orders in violation of 18 U.S.C. §1509, or for contempt of those orders under 18 U.S.C. §401. Admittedly, the Attorney General can act on behalf of the United States courts in those instances. Why should he not be permitted to come in here to accomplish the same purpose by different, less radical means? The absence of specific statutory authority is of itself no obstacle, for it is well settled that there is no such prerequisite to the appearance of the United States before its own courts. *United States v. San Jacinto Tin Co.*, 125 U. S. 273, 278-285; *Kern River Co. v. United States*, 257 U.S. 147, 155; *Sanitary District v. United States*, 266 U. S. 405, 426. Nor do the statutes governing the Attorney General's participation in court proceedings contain a prohibition. See 5 U.S.C. §§ 309, 316. On the contrary, the amendment to Section 1509 of Title 18, added by the Civil Rights Act of 1960, expressly permits the United States to seek *preventive relief* even though a crime may already have occurred.

The same considerations govern from the court's point of view. No one doubts that federal courts may call

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United States v. California, 332 U.S. 19, 28, in which the Supreme Court rejected a similar argument, saying: "That Congress twice failed to grant the Attorney General specific authority to file suit against California, is not a sufficient basis upon which to rest a restriction of the Attorney General's statutory authority."

on the Justice Department to enforce their decrees by resort to arms if necessary. *In re Neagle*, 135 U. S. 1. Nor is it disputed that they can direct the United States Attorney to prosecute contempts of their authority. F.R.Cr.P., Rule 42. But must they resort to such extreme measures to obtain the aid of the executive branch in the implementation of their judgments? All reason rejects that absurd result. And nothing opposes the more temperate course followed here.(15) Indeed, the Supreme Court has said: "After all, a federal court can always call on law officers of the United States to serve as *amici*." *Universal Oil Products Co. v. Root Mfg. Co.*, 328 U.S. 575, 581.(16)

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(15) Compare *In re Debs*, supra, at 583: "So, in the case before us, the right to use force does not exclude the right of appeal to the courts for a judicial determination and for the exercise of all their powers of prevention. Indeed, it is more to the praise than to the blame of the government, that, instead of determining for itself questions of right and wrong on the part of these petitioners and their associates and enforcing that determination by the club of the policeman and the bayonet of the soldier, it submitted all those questions to the peaceful determination of judicial tribunals, and invoked their consideration and judgment as to the measure of its rights and powers and the correlative obligations of those against whom it made complaint. * * * "

(16) Undoubtedly, the court might have itself provoked a hearing and issued the injunctions sua sponte in order to effectuate its judgments. 28 U.S.C. §1651. See *Hazel-Atlas Co. v. Hartford Co.*, 322 U.S. 238, 245: "Surely it cannot be that preservation of the integrity of the judicial process must always wait upon the diligence of litigants. The public welfare demands that the agencies of public justice be not so impotent that they must always be mute and helpless victims * * * ". But the court should not be compelled to be its own attorney. It is entitled to seek out a friend to protect its integrity, and, as the Court of Appeals said in *Faubus*, supra, at 805, "the court could not, with pro-

We conclude that the participation of the United States at this stage of the proceeding is entirely appropriate. We invited the United States to enter the case in an effort to find a peaceful solution to the problem created by the state's interference with the orders of the court. To do otherwise was to risk anarchy. Through this procedure, we sought to keep the conflict in the courts. Thus the rule of law was preferred to the law of the jungle. Why the defendants deprecate this choice is difficult to understand. Certainly they were not fatuous enough to hope that the United States would stand idly by and watch the orders of its courts flouted, particularly in this sensitive area of constitutional rights.

On these findings temporary injunctions will issue restraining the enforcement of Act 5 of the Second Extraordinary Session of the Louisiana Legislature for 1960 and Act 4 and Senate Concurrent Resolution 7 of the Third Extraordinary Session. For the present, however, there appears no compelling reason to direct the Secretary of State to certify the re-election of Mr. Sutherland, since all parties agree that he retains his membership in the Orleans Parish School Board as a hold-over regardless of the recent election. At this time, therefore, the ap-

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priety, employ private counsel to do the necessary investigative and legal work."

We note that defendants, in support of their argument that the United States is an unnecessary party, say nothing of the court's right to act on its own motion. This is obviously because the proposition cuts both ways. Indeed, if the court may grant these applications sua sponte, nothing is accomplished by eliminating the government as the moving party.

plication for a mandatory injunction will be denied, reserving to the United States or any other interested party the right to re-urge it should Mr. Sutherland's title to office be threatened.

Judgment accordingly.

(Signed) RICHARD T. RIVES

RICHARD T. RIVES, Judge
United States Court of Appeals

(Signed) HERBERT W. CHRISTENBERRY

HERBERT W. CHRISTENBERRY, Chief Judge
United States District Court

(Signed) J. SKELLY WRIGHT

J. SKELLY WRIGHT, Judge
United States District Court

New Orleans, Louisiana
March 3, 1961

APPENDIX "B"

Appropriate extracts from provisions of the Louisiana Constitution are reproduced as follows:

ARTICLE 12, SECTION 1

"Section 1. The Legislature shall have full authority to make provisions for the education of the school children of this State and/or for an educational system which shall include all public schools and all institutions of learning operated by State agencies . . ."

ARTICLE 12, SECTION 10

"Section 10. The Legislature shall provide for the creation and election of parish school boards which shall elect parish superintendents for their respective parishes, and such other officers or agents as may be authorized by the Legislature . ."

ARTICLE 12, SECTION 11

"Section 11. Municipal or parish school boards and systems now in existence by virtue of special or local legislative acts are hereby recognized, subject to control by and supervision of the State Board of Education, and the power of the Legislature to further control them by special laws."

ARTICLE 7, SECTION 56

"Section 56. The Attorney General and the assistants shall be learned in the law and shall have actually resided and practiced law, as duly licensed attorneys, in the State for at least five years preceding their election and appointment. They, or one of them, shall attend to, and have charge of

all legal matters in which the State has an interest, or to which the State is a party, with power and authority to institute and prosecute or to intervene in any and all suits or other proceedings, civil or criminal, as they may deem necessary for the assertion or protection of the rights and interests of the State. They shall exercise supervision over the several district attorneys throughout the State, and perform all other duties imposed by law."

ARTICLE 9, SECTION 3

"Section 3. For any reasonable cause, whether sufficient for impeachment or not, any officer, except the Governor or acting Governor, on the address of two-thirds of the members elected to each house of the Legislature, shall thereby be removed, and be ineligible to succeed himself. . ."

ACT 5 2d EXTRAORDINARY SESSION 1960

HOUSE BILL NO. 6

BY: MESSRS. FIELDS, LEHMANN AND TRICHE

AN ACT

To amend and re-enact Section 261 of Title 42 of the Louisiana Revised Statutes of 1950, as amended by Act No. 264 of 1952, relative to representation by the district attorneys and the Attorney General of certain parish, state and city boards and commissions, so as to repeal the provision permitting the Orleans Parish School Board, or its successor, to select its own attorney and to fix and pay his salary.

Be it enacted by the Legislature of Louisiana:

Section 1. Section 261 of Title 42 of the Louisiana Revised Statutes of 1950 is hereby amended and re-enacted to read as follows:

§ 261. Attorney General to be counsel for boards and commissions

A. The Attorney General in the Parish of Orleans and the district attorneys of the several judicial districts, other than the parish of Orleans, shall ex-officio and without extra compensation, general or special, be the regular attorneys and counsel for the parish governing authorities, parish school boards, and city school boards within their respective districts and of every state board or commission domiciled therein, the members of which, in whole or in part, are elected by the people, or appointed by the Governor or other perscribed authority, except the state boards and commissions domiciled at the city of Baton Rouge, and all boards in charge or in control of state institutions.

B. All legal services for parish governing authorities, parish school boards, city school boards and all state boards and commissions, including levee boards, hospital and asylum boards, educational boards and dock boards, the members of which in whole or in part, are elected by the people or are appointed by the Governor, or other prescribed authority, in reference to the issuance of bonds, notes or other evidences of indebtedness, whether in the

original instance, or for refunding purposes, shall be under the supervision, control and authority of the Attorney General.

C. It shall be unlawful for any parish governing authority, school board, or state board or commission to retain or employ, for any compensation whatever, any attorney or counsel to represent it generally, or, except as provided in R. S. 42:263, to retain or employ any special attorney or counsel, for any compensation whatever, to represent it in any special matter, or pay any compensation for any legal services whatever; provided, that the Board of Commissions of the Port of New Orleans shall select its own attorney, who shall also be the attorney for the Orleans Levee Board, without additional compensation from the levee board.

The provisions of this Part shall not apply to the board of assessors of the Parish of Orleans, the salary of whose attorney is paid by the city of New Orleans, nor shall it apply to the Board of Liquidation of the City Debt, created by Act 110 of 1890.

D. Any party who shall file suit against any duly elected or appointed public official of the State of Louisiana or any of its agencies or political subdivisions for any matter arising out of the performance of the duties of his office other than matters pertaining to the collection and payment of taxes and those cases where the plaintiff is seeking to compel the defendant to complay with and apply the laws of the State of Louisiana relative

to the registration of voters, and who shall be unsuccessful in his demands shall be liable to said public official for all attorneys' fees incurred by said public official in the defense of said lawsuit or lawsuits, which said attorneys' fees shall be fixed by the court.

The defendant public official shall have the right by rule to require the plaintiff to furnish bond, as in the case of bond for costs, to cover such attorneys' fees before proceeding with the trial of said cause.

Section 2. All laws or parts of law in conflict herewith are hereby repealed and particularly the provisions of the Section C of Section 261 of Title 42 of the Revised Statutes of 1950 which provides that the Orleans Parish School Board is authorized to select its own attorney, whose salary shall be fixed and paid by the board.

Section 3. The necessity for the immediate passage of this act was certified by the Governor to the Legislature while it was in session. This act shall, therefore, take effect immediately upon its approval by the Governor.

SENATE CONCURRENT RESOLUTION NO. 7
3rd EXTRAORDINARY SESSION OF 1960.

A CONCURRENT RESOLUTION

WHEREAS, Act 17 of the First Extraordinary Session of the Legislature of Louisiana for the year 1960,

which became effective November 8, 1960, withdrew, reclaimed, suspended and reserved to the Legislature of Louisiana all powers, duties and functions previously vested by law in parish school boards in parishes having a population of over 300,000 persons and repealed all laws or parts of laws in conflict with said Act 17; and,

WHEREAS, the Parish of Orleans contains a population of more than 300,000 persons; and,

WHEREAS, since the effective date of the said Act 17 of the First Extraordinary Session of 1960, the Legislature of Louisiana has been the governing authority of the public school system of the Parish of Orleans; and,

WHEREAS, House Concurrent Resolution No. 18, adopted November 13, 1960, effective on said date, provided in part:

> "BE IT FURTHER RESOLVED, that Dr. James F. Redmond and Samuel I. Rosenberg be, and they are hereby relieved of any and all duties in connection with the operation of the Public School System of the Parish of Orleans, and they are hereby discharged from their respective employments as Superintendent and Attorney, respectively."

and,

WHEREAS, James F. Redmond has, in spite of the above quoted provision of said Concurrent Resolution, from and after the effective date thereof, sought to disregard the fact of his removal from the office of Parish

Superintendent of Schools for the Parish of Orleans and has pretended to and continues to pretend to hold said office, and has attempted to exercise and usurp the functions thereof, although having no legal right whatever, thereto; and,

WHEREAS, the said James F. Redmond, from and after November 13, 1960, the effective date of the aforementioned House Concurrent Resolution No. 18, has violated the aforementioned Act 17 of the First Extraordinary Session of 1960 and particularly Section 4 of said Act which reads as follows:

"Section 4. Any person who obstructs or in any manner attempts to obstruct or prevent the duly authorized members of the Louisiana Legislature or any of the employees of the Legislature from exercising the powers, duties and functions assumed by this Act or any person who has custody of any property, books, records and papers pertaining to the operation of said schools and refuses to deliver such custody and possession to said members of the Legislature or employees engaged in the operation of said schools under this Act, and any person who attempts to exercise or perform any of the powers, duties and functions assumed by this Act, without authority from the Legislature or its authorized members, shall be deemed guilty of a misdemeanor, and upon conviction by court of competent jurisdiction shall be fined not less than Five Hundred Dollars ($500.00) nor more than One Thousand Dollars ($1000.00) and be sentenced to serve not less than sixty (60) days and not more than six (6) months in the parish jail, and no

judge shall have authority to remit such fines or suspend such sentence."

and,

WHEREAS, Article IX, Section 3, of the Constitution of Louisiana, reads as follows:

"§ 3. removal on address by legislature

Section 3. For any reasonable cause, whether sufficient for impeachment or not, any officer, except the Governor or acting Governor, on the address of two-thirds of the members elected to each house of the Legislature, shall thereby be removed, and be ineligible to succeed himself. The cause or causes for which such removal is made shall be stated at length in the address and printed in the journals of both houses."

and,

WHEREAS, the Legislature of Louisiana finds that from and after November 13, 1960, there was reasonable cause for the removal of the said James F. Redmond from the office of Parish Superintendent of Schools for the Parish of Orleans,

NOW, THEREFORE, BE IT RESOLVED by the Legislature of Louisiana, two-thirds (2/3) of the members elected to each House concurring, that by virtue of the authority vested in said Legislature by the provisions of the above quoted Article IX, Section 3, of the Constitution of Louisiana, James F. Redmond be and he is hereby addressed out of and removed from the office of

Parish Superintendent of Schools for the Parish of Orleans, effective from and after November 13, 1960.

BE IT FURTHER RESOLVED that the assistant sergeant-at-arms of the Legislature of the State of Louisiana may be used to carry out the provisions of this resolution.

ACT 4 3rd EXTRAORDINARY SESSION 1960

AN ACT

To amend and re-enact Sub-part C of Chapter 1 of Title 17 of the Louisiana Revised Statutes of 1950, Sections 121 through 128 of said Title, relative to the Orleans Parish School Board; to provide for the election of the members of the Orleans Parish School Board at the congressional elections beginning with the next such election; to name, constitute, designate and appoint the members of said Orleans Parish School Board to serve in the interim until said election is held; to provide that said board shall be the successor in law of the Orleans Parish School Board abolished by Acts 17 and 25 of the First Extraordinary Session of the Louisiana Legislature of 1960; to terminate and revoke the suspension of Part II of Title 17 of said Revised Statutes made by House Concurrent Resolutions Numbered 10 and 17 and Act 17 of the First Extraordinary Session of the Louisiana Legislature of 1960; and to repeal all laws or parts of laws in conflict with this Act, and particularly Act 2 of the Second Extraordinary Session of 1960.

WHEREAS, the Supreme Court of Louisiana in the matter entitled Singlemann, et al. vs. Davis, et al., No. 45,447 on the docket of said Court, has sustained the constitutional power of the Legislature of Louisiana to provide the manner of filling all offices created by it, as well as its constitutional power to abolish such offices; and,

WHEREAS, the Orleans Parish School Board, in existence prior to November 8, 1960, was abolished by laws which became effective on that date; and,

WHEREAS, it is the purpose of this Legislature to create an Orleans Parish School Board as the successor in law of the Board abolished as aforesaid;

NOW THEREFORE, BE IT ENACTED BY THE LEGISLATURE OF LOUISIANA:

Section 1. That Sub-part C of Chapter 1 of Title 17 of the Louisiana Revised Statutes of 1950, Sections 121 through 128, as amended, is hereby amended and re-enacted to read as follows:

§ 121. Election of members; qualifications; compensation; vacancies; interim members

There is hereby created a school board for the Parish of Orleans, to be known and designated "Orleans Parish School Board," to consist of five members, to be elected at large from the Parish of Orleans at the congressional elections in said Parish in accordance with

law. The members to serve in the interim from the time this Act takes effect until t[illegible] next congressional election in the Parish of Orleans are hereby named, constituted, designated and appointed as follows:

Emile A. Wagner, Jr., of the Parish of Orleans
Robert L. Hickerson, of the Parish of Orleans
F. Otway Denny, of the Parish of Orleans
John Singreen, of the Parish of Orleans
Edward J. Penedo, of the Parish of Orleans.

No commissions shall be required or necessary for the persons above named and this Act shall be sufficient to evidence the rights of said persons to said offices, but each such person shall subscribe to the oath provided by law and the filing of such oath shall constitute possession of the office to which each of said persons is herein appointed.

Beginning with the next congressional election in the Parish of Orleans, the members of the Orleans Parish School Board shall be elected as provided in the primary and general election laws for other parish school boards. The first members elected shall draw lots for two terms of four years, and one term of six years, and their successors shall be elected for terms of six years.

The members of the Orleans Parish School Board shall have the same qualifications as those in the other parishes of the state. The members of the said Board shall serve without pay, and the Board shall meet monthly and at such called meeting as the president may require.

All vacancies in the membership of the Board caused by death, resignation, or otherwise, shall be filled by appointment by the Governor.

The Orleans Parish School Board herein created shall be the successor in law of the Orleans Parish School Board abolished on November 8, 1960. It is constituted a body corporate with the power to sue and be sued under the name and style Orleans Parish School Board. Citation shall be served on the president of the Board and in his absence on the vice-president.

§ 122. Application of general laws and regulations of state board of education

All laws, and all rules and regulations of the State board of education governing other parish school boards throughout the state, shall govern the Orleans Parish School Board, except as otherwise specifically provided in this Title.

§ 123. Superintendent of schools as treasurer of board; bond

The superintendent of public schools of the Parish of Orleans shall be ex-officio the treasurer of the Orleans Parish School Board and shall receive all funds apportioned by the state to the City of New Orleans or received or collected for the support of the free pubic schools from any and all sources. He shall give bond, with security in the sum of Fifty Thousand Dollars ($50,000.00) in favor of the board and its successors in office, to be ac-

cepted and approved by the board and recorded in the mortgage office of the parish, which bond shall then be filed and kept on record in the office of the board. The filing of the bond and the taking and filing the usual oath of office before any officer authorized to administer the same, shall qualify the treasurer to act. The board shall designate the officers or persons who shall sign checks or warrants drawn against the school funds. All persons so authorized shall furnish a surety bond of not less than Fifty Thousand Dollars ($50,000.00), for the faithful performance of their duties.

§ 124. Appropriations, authority to make

The Orleans Parish School Board may make annual appropriations out of any of its funds to the teachers' retirement fund of the pubic schools of the parish; these appropriations shall not be less than Thirty Thousand Dollars ($30,000.00) each year. The board may make additional appropriations to be used as a special fund for aged and infirm teachers as are, under the laws in effect on July 26, 1922, receiving less than Twenty-Five Dollars ($25.00) a month.

§ 125. Normal schools; authority to maintain; salary schedules.

The Orleans Parish School Board may maintain one or more normal schools for the professional training of teachers. The course of study pursued in such schools must be approved by the state board of education. All graduates of these normal schools shall be awarded

diplomas. The normal schools in existence on July 29, 1942, under the authority of this Section, may award the degree of bachelor of arts and bachelor of science to graduates who complete four-year courses approved by the state board of education. Wherever the Orleans Parish School Board fixes salary schedules to distinguish between teachers employed on July 29, 1942, who have certificates based on degrees from recognized colleges or universities and certificates issued by the state board on the basis of a two years normal course, or on other qualifications accepted by the state board of education, and in which cases the teachers are on the same level of experience, the Orleans Parish School Board shall in no instance pay to the teacher holding the certificate based on the two years normal course, or on other qualifications accepted by the state board of education, a salary which shall be less than that paid to the holder of the certificate based on a college degree by an amount exceeding Fifteen Dollars ($15.00) per month, or One Hundred Fifty Dollars ($150.00) per annum.

§ 126. Courses of study and text books; authority to adopt

The Orleans Parish School Board has authority to prepare courses of study for use in public schools of Orleans Parish, subject to the approval of the state board of education, and to adopt text books for use in the public schools of Orleans Parish, subject to the approval of the state board of education.

§ 127. Revenue of parish school board; duty to secure

The Orleans Parish School Board or its successor in law, shall secure its revenues as provided in the Constitution of the state.

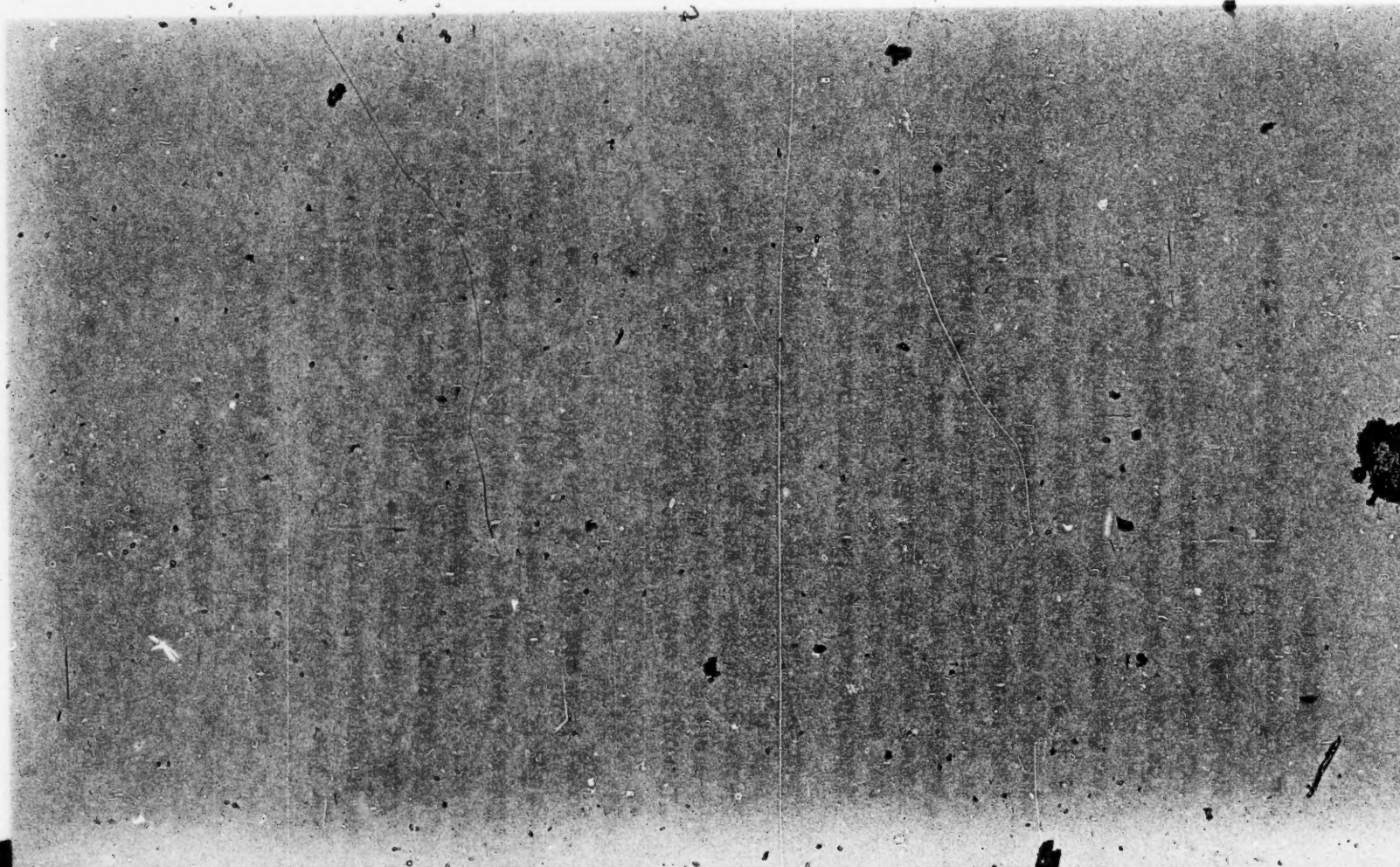
§ 128. Contracts; bids

When required so to do by existing state law, all contracts for public works or for materials and supplies ordered by the Orleans Parish School Board shall be advertised by the board in accordance therewith. The board shall have the right to appoint, by proper resolution, a committee consisting of three or more of its employees to publicly open all bids at the time and place specified in the advertisement, outside of the presence of the board. The said committee shall then tabulate all bids so received, and furnish the board with written tabulation. The board shall then let the contract, or reject all bids, within the time specified in the advertisement.

Section 2. That the suspension of Part II of Title 17 of the Louisiana Revised Statutes of 1950, Sections 51 through 127, effected by House Concurrent Resolutions Numbered 10 and 17 and Act 17 of the First Extraordinary Session of the Louisiana Legislature of 1960, be and said suspension, or suspensions, is hereby revoked, terminated and repealed.

Section 3. That all laws or parts of laws in conflict with this Act be and the same are hereby repealed. Act 2 of the Second Extraordinary Session of the Louisiana Legislature of 1960 is hereby repealed.

Section 4. The necessity for the immediate passage of this Act having been certified by the Governor to the Legislature while in session, in accordance with Section 27 of Article III of the Constitution of Louisiana, this Act shall become effective immediately upon approval by the Governor.



APPENDIX "C"

Legislative History of Civil Rights Acts

The Legislative History of the Civil Rights Act of 1960 is contained largely in *Senate Report #1205* (1960 US Code & Cong. News. 1925 et seq.) and *House Report No. 956* (id., page 1939 et seq.) The House Report states that some 39 bills on the subject were considered by its Judiciary Committee, but the hearings dealt largely with two bills, H. R. 3147 and H. R. 4457. The report states on pages 1939 and 1940 of the 1960 U.S. Code & Cong. News:

> "During the course of those hearings, the testimony —while it related to all the subjects of the legislative proposals— was devoted primarily to two bills, H. R. 3147 and H. R. 4457, introduced by Representatives Celler and McCulloch, respectively.
>
> After the hearing, the subcommittee met in executive session to consider the bill H. R. 3147: It struck out of that proposal all after the enacting clause and inserted in lieu thereof an amendment in the nature of a substitute. The substitute proposal consisted of a combination of the legislative provisions contained in the bills, H. R. 3147 and H. R. 4457, and the amended version was recommended to the full Judiciary Committee.
>
> The substitute version of the legislation before the full Judiciary Committee contained nine titles. Briefly these were:
>
> 1. Obstruction of Court Orders in School Desegregation Cases.

2. Authorization to the Attorney General to Institute Civil Proceedings to Protect the Right to Equal Protection of the Laws.

The full Judiciary Committee, in its deliberation and consideration of the amended bill H. R. 3147, adopted six of the recommendations of the subcommittee, namely, the obstruction of court orders, flight to avoid prosecution with a broadened provision to include the destruction of any building or other real or personal property, preservation of Federal election records, extension of the Civil Rights Commission for 2 years, education of children of members of the Armed Forces and, finally, a separability title. . . After the full committee had approved this substitute version of H. R. 3147, the chairman introduced a clean bill, H. R. 8601 which contained the titles as amended and approved by the full Judiciary Committee. That bill, H. R. 8601, was referred to the Committee on the Judiciary and the full committee then ordered it reported without amendment."

H. R. #3157 by Mr. Celler which was partly written into H. R. 8601, the measure considered finally by the Congress, contained the following provisions in Section 602:

"*Sec. 602.* The Attorney General is authorized to institute for or in the name of the United States a civil action or other proceeding for preventive relief, including an application for injunction or other order, (1) against any person or persons preventing or hindering, or threatening to prevent or hinder, or conspiring to prevent or hinder any Federal, State, or local official from according any person or group of persons the right to the

equal protection of the laws without regard to race, color, religion, or national origin, or (2) against any person or persons preventing or hindering, or threatening to prevent or hinder, or conspiring to prevent or hinder the execution of any court order protecting the right to the equal protection of the laws without regard to race, color, religion, or national origin."

In the hearings before the Senate Committee concerning the proposals made for the Civil Rights Act of 1960, Attorney General Rogers called attention to the fact that the United States had been authorized to seek injunctions in 49 different acts passed by Congress, but had not been authorized to appear and seek injunctive relief in civil rights cases, and on many cases involving the obstruction of the due administration of justice. These 49 statutes are printed in Part III of the Hearings before the Subcommittee on the Judiciary, United States Senate, 86th Congress, First Session, pages 1496, et seq. These statutes include: Restraining violation of Anti Trust Laws (15 USC 4), Enjoining violation of the Atomic Energy Act (42 USC 2280), Enjoining false advertisements (15 USC 53), Enjoining violations of orders of the SEC (15 USC 80a-41), Enjoining violations of the Fair Labor Standards Act (29 USC 217) Restraining violations of the Securities and Exchange Commission Act (15 USC 78 u), Restraining violations of orders of the Secretary of Agriculture under the Packers and Stock Yards Act (7 USC 194), Enforcing orders of the Federal Trade Commission (15 USC 49), Enjoining violations of the Natural Gas Act (15 USC 717-s), Restraining disobedience of

the Federal Communications Commission (47 USC 401), and many other similar statutes. The Congress has always deemed it necessary to prescribe the cases in which the United States can appear as a litigant, but it has refused on many occasions to authorize the attorney general to appear in court and seek injunctions against violations of the Civil Rights Acts, and against obstructions to the due administration of justice. The attorney general has recommended to Congress that it confer such authority upon the Department of Justice in the various hearings on the Civil Rights Act of 1949, 1957 and 1960, and on each occasion Congress has denied this privilege to the Department of Justice.

In the hearings on the Civil Rights Act of 1960 before Subcommittee No. 5 of the Committee on the Judiciary, House of Representatives, 86th Congress, First Session, Attorney General Rogers gave testimony beginning at page 205 of the Report on the Hearings before this Committee. He makes the following statements on pages 207 and 208 of the Committee Hearings:

> ". .If the execution of the decrees of the courts are obstructed by force or threats of force, the Federal Government should have authority to act effectively. . .
>
> The Department's study shows that there is doubt as to whether the existing authority of the Federal courts is sufficient to impose effective sanctions against members of mobs—or against others who, by threats or force, willfully prevent, obstruct, impede, or interfere with the exercise of rights or the performance of duties under a school desegrega-

tion order of a Federal court. The purpose of this proposal is to remove that doubt.

The relevant obstruction-of-justice statute also appears to be inadequate. It (18 USC 1503) punishes whoever (1) 'corruptly, or by threats or force, or by any threatening letter or communications, 'intimidates or endeavors to intimidate a witness in a U. S. court or before a U. S. commissioner or any grand or petit jury, or any official in the discharge of judicially connected duties; or (2) injuries a party or witness on account of his testimony in a Federal judicial proceeding or a grand or petit juror on account of a verdict or indictment; or (3) injures an officer on account of the performance of judicially connected duties; or (4) corruptly or by threats or force obstructs or impedes the 'due administration of justice.'

The use of force to obstruct an existing desegregation decree would be covered by this statute, if at all, only it it could be considered to obstruct or impede the 'due administration of justice.' That phrase has been narrowly interpreted to be qualified and limited by the acts specifically enumerated in the preceding portions of the statute (United States v. Scoratow, 137 F. Supp. 620 (W.D. Pa., 1956), which I have just read, and to embrace only conduct similar in nature to the specifically enumerated acts. Haili v. United States (260 F. 2d 744 (C. A. 9, 1958))."

The Civil Rights Act of 1960 did not confer on the federal government authority to act and seek injunctive relief where the decrees of the federal courts are obstructed by force or theats of force.

The testimony of Attorney General Rogers before the House Committee was repeated by him in the hearings before the Subcommittee on Constitutional Rights of the Committee on the Judiciary in the United States Senate, 86th Congress, First Session, and appears in the Report of that hearing at pages 185, et seq. In a memorandum which Mr. Rogers subsequently furnished Senate Committee for insertion in the record on pages 228 and 229, he made the following statements concerning existing laws regarding obstruction to the due administration of justice:

> "With respect specifically to the problem of whether this statute extends to acts which are intended to have the effect of thwarting the exercise of rights or the performance of duties flowing from a decree or order of a court, there are a number of decisions which indicate that in all probability the answer would be negative. (1) . . . .
>
> It has been held that the phrase 'due administration of justice' is not one of enlargement but of limitation. United States v. Perlstein, 126 F. 2d 789 (C. A. 3, 1941) . . .
>
> In the early case, United States v. McLeod, 119 Fed. 416 (C. C. N. D. Ala., 1902), the court held that the phrase did not bring within it an assault upon a U. S. commissioner on account of his having required the defendant to execute a bail bond; the approach adopted by the court was that since the commissioner had already performed his duty, the assault could not have influenced or impeded the due administration of justice. It stated (p. 419):
>
> 'As we have observed, unless there is some case pending in a court, or sought to be brought 'there-

in,' there is nothing as to which 'the due administration of justice' can be influenced or obstructed 'therein.' This statute does not create the offense of obstructing justice in general or in the abstract.'

The most recent holding on the point is Haili v. United States, 260 F. 2d 744 (C. A. 9, 1958).

The foregoing demonstrates that the courts would probably not construe the existing obstruction of justice statute as extending to the obstruction of the enforcement of desegregation decrees. While it could be argued that interference with such decrees relates to the previously pending cases and thus disturbes the ordinary and proper functions of the court, in light of the precedents such an argument would probably not be successful."

"(4) There are, of course, other statutes dealing with circumstances, but it is clear that they are not adequate to meet the problem here involved. 18 U. S. C. sec. 1501 punishes obstruction or resistance to the service of execution of process or assault in connection therewith; 18 U. S. C. sec. 1502 punishes obstruction or resistance to an extradition agent; 18 U. S. C. sec 1504 relates to written attempts to influence grand or petit jurors; 18 U. S. C. sec. 1505, to obstruction of administrative proceedings and congressional investigations; 18 U. S. C. sec. 1506, to theft or alteration of judicial records; and 18 U. S. C. sec. 1507, to picketing or parading in or near a Federal courthouse or building or residence occupied or used by a Federal judge, witness, or court officer."

In *Senate Report No. 1205* covering the proposed Civil Rights Act of 1960, there is a discussion of the pro-

visions of the proposed act—which provisions were deleted from the bill as finally passed by Congress. This Senate Report appears in *1960 U. S. Code Congressional and Administrative News*, pages 1925 et seq. The following excerpts are taken from *Senate Report No. 1205* as it appears on pages 1930-32, inclusive:

> "In 1957, Congress had before it a proposal to authorize the Attorney General to initiate injunctive relief suits on behalf of citizens complaining that they were being denied equal protection of the law. It approved authority of this kind for the voting field. It is still urgently needed in other fields to give support to those seeking their constitutional rights but who cannot afford the length and costly procedures involved in Federal court cases. . . .The authority contained in the so-called title III or part III which was not included in the 1957 act is essential to any new civil rights bill. It is the same type of authority already given the Attorney General by 50 other statutes now on the books. . . .
>
> Conclusions
>
> We believe the bill reported by the Judiciary Committee to be inadequate unless amended and strengthened. We recommend the bill include the following:
>
> (b) Authority for the Attorney General to obtain injunctive relief in school and other violations of equal protection of the law."

House Report No. 956 of the Civil Rights Act of 1960 as it appears in *1960 U. S. Code Congressional and*

Administrative News, pages 1940-42, inclusive is quoted as follows:

"The substitute version of the legislation before the full Judiciary Committee contained nine titles. Briefly, these were:

1. Obstruction of Court Orders in School Desegregation Cases.

* * * *

3. Authorization to the Attorney General to Institute Civil Proceedings to Protect the Right to Equal Protection of the Laws.

Section 101 of the bill proposes to amend chapter 73 of title 18 of the United States Code with respect to obstruction of court orders in school desegregation cases. Accordingly, it amends that title by adding at the end of the chapter a new section. The measure would make it a federal offense to willfully use force or theats of force to obstruct or impede court orders for school desegregation purposes; upon conviction, the offender could be punished by a fine of not more than $1,000 or imprisonment for not more than 60 days or both.

It further provides that other injunctive or civil relief against the type of conduct made criminal by this proposal is not to be denied on the grounds that such conduct is a crime. . . .

It is the opinion of the Department of Justice that there is doubt as to whether the existing authority of Federal courts is sufficient to impose effective sanctions against the members of a mob who, by threats or force, willfully prevent, obstruct, impede, or interfere with the exercise of rights or the per-

formance of duties under a school desegregation order of a Federal Court. . .

The present obstruction of justice statute (18 U.S.C. 1503) also appears to be inadequate for such a situation. The particular provision of that section, namely 4, dealing with one who corrupts or by threats of force endeavors to impede 'due administration of justice' would be applicable only if it could be considered that the action involved obstructed or impeded the 'due administration of justice.' That particular phrase has been a subject of narrow interpretation by the courts. . . .The Department of Justice has recommended the enactment of this provision as a specific and firm responsibility of the proven need for effective Federal action to preserve the lawfully determined rights of individual citizens and the integrity of our Federal judicial system.

As state above, the Civil Rights Act of 1960 did not authorize the Department of Justice to seek injunctive relief in cases of this kind.

Attorney General Brownell submitted an analysis concerning the proposed *Civil Rights Act of 1949* in hearings before the Committee on the Judiciary, 81st Congress, First and Second sessions. This analysis was filed in the record of the hearings before Subcommittee No. 2 of the Committee on the Judiciary House of Representatives, 84th Congress, First Session beginning at page 157. The following excerpts appear in Brownell's analysis on page 158 and 164:

"Following the Civil War a number of civil rights statutes were enacted, but over the years through

decisions of the Supreme Court and the Congressional action in 1894 and 1909, the laws implementing the three amendments were reduced in number and scope. . .

The existing civil rights statutes fall far short of providing adequate implementation of the amendments protecting life, liberty and property.

. . .An important function to be developed, with the aid of legal tools which this bill can provide, is greater use of preventive civil remedies, wherein the Attorney General may proceed in the public interest, not by way of punishment, but to prevent and enjoin threatened infringments and deprivations of rights. An expanded Division would not only deal in such matters but also ought to be prepared to intervene in important litigation affecting civil rights. Even now, under the few current statutes, court construction of the existent civil remedy provisions has serious bearing upon the criminal cases, and vice versa, since the language of both is regarded substantially in pari materia."

The legislative history of the Civil Rights Act of 1957 appears in Volume 2 of the *1957 U. S. Code Congressional Administrative News* at pages 1966 et seq. The purpose of the bill which was reported favorably by the Committee is thus stated in *House Report No. 291* as it appears on pages 1966 and 1968:

". . .The bill amends existing law so as to permit the Federal Government to seek from the Civil courts preventive or other necessary relief in civil-rights cases. . .

. .Besides the congressional authors of the bills, the Attorney General of the United States testified, as

did representatives of various private organizations which support civil-rights legislation. .

Aside from certain technical amendments involving changes in language and form, the Judiciary Committee approved the proposal of the subcommittee with the following substantive changes.: . . . . .the provision permitting the Attorney General to bring suit to recover damages for an aggrieved party because of a deprivation of civil rights or the right to vote was eliminated, thus limiting the Attorney General in such cases to civil actions for injunctive relief."

On pages 1969 in the above cited text there is a statement regarding the authorization for the attorney general "to institute civil actions in certain cases involving Title 42, U. S. Code, Section 1985." This particular law makes it a crime to obstruct the due administration of justice. The Civil Rights Act of 1957, however, did not confer any such authority on the attorney general.

The following excerpts are taken from *House Report No. 291* of the Civil Rights Acts of 1957 as it appears on page 1970 of *1957 U. S. Code Congressional and Administrative News*, supra:

"The need for legislation such as proposed by the bill H. R. 6127 has, in the opinion of the majority of the members of the committee, been clearly established . In support of such a contention are the report of the President's Committee on Civil Rights in 1947, the message of President Truman in 1943, and the messages of President Eisenhower in 1956 and on January 19, 1957, and corroborating those recommendations is that of the Attorney Gen-

eral of the United States as contained in an executive communication of April 9, 1956, which was repeated again during the course of his testimony before the committee in 1957. The provisions of the bill H. R. 6127 are designed to achieve a more effective enforcement of the rights already guaranteed by the Constitution and laws of the United States. . . .While there may or may not be a need for additional legislation, there can be no denial of the fact that there is an existing need for an immediate strengthening of the enforcement of existing rights. For that reason, the bill permits the creation of a Civil Rights Division in the Department of Justice and confers upon the Attorney General of the United States the authority to institute civil actions in the name of the United States or for the United States to protect the existing rights and to expand the right of franchise in Federal elections.

. . .The proposal does not extend nor increase the area of civil rights jurisdiction in which the Federal Government is entitled to act. Those rights are presently protected by constutional amendment and when violations occur they are subject to Federal prosecution. . . "

From the same legislative history we quote the following provisions of the House Report relating to interference with Civil Rights and obstruction to administration of justice as it appears on pages 1974 and 1976, inclusive:

"Section 121 amends title 42, United States Code, Section 1985 (sec. 1980 of the Revised Statutes) by adding two new paragraphs at the end thereof. The

first of the new paragraphs provides that the Attorney General may institute for the United States or in the name of the United States a Civil action for preventive relief whenever a person has committed any acts or practices which would give rise to a cause of action under the existing laws as contained in section 1985. . .

The effect of the provisions of the proposed bill on existing law as contained in title 42, United States Code, section 1985 is not to expand the rights presently protected but merely to provide the Attorney General with the right to bring a civil action or other proper proceeding for relief to prevent acts or practices which would give rise to a cause of action under the three existing subsections. Thus, the proposal does create a new remedy. Moreover, it authorizes the Attorney General to institute an action whenever any persons are about to engage in those acts and practices which would give rise to any of the three causes of action, hereinabove mentioned so long as there are reasonable grounds to believe that such persons are about to commit such acts and practices.

The new subsection designated as the 'fifth' provides that the district courts of the United States shall have jurisdiction of the proceedings instituted pursuant to section 1985, as amended, by this proposal. . . "

"The Attorney General has recommended this provision both in his testimony before the committee and in his executive communication on civil rights dated April 9, 1956."

Another letter from Attorney General Brownell dated April 9, 1956, appears on pages 1978-1980 in which the following statements appear:

> "In this area, as pointed out more fully below, more emphasis should be on civil law remedies. The civil rights enforcement activities of the Department of Justice should not, therefore, be confined to the Criminal Division.
>
> Under another civil rights statute (sec. 1985 of title 42 of the United States Code) conspiracies to interfere with certain rights can be redressed only by a civil suit by the individual injured thereby. I urge consideration by the Congress and the proposed Bipartisan Commission of a proposal authorizing the Attorney General to initiate Civil action action where necessary to protect the rights secured by that statute."

42 U. S. C. 1985, referred to in the foregoing quotations, in subsection (2) provides an individual remedy against persons who conspire to impede, hinder, or obstruct the due course of justice. It provides, in part:

> "If two or more persons conspire for the purpose of impeding, hindering, obstructing, or defeating, in any manner, the due course of justice in any state or Territory with intent to deny to any citizen the equal protection of the laws, or to injure him or his property for lawfully enforcing, or attempting to enforce the right of any persons, or class of persons, to the equal protection of the laws. . . the party so injured or . . prived may have an action for the recovery of damages. . . ."

The Civil Rights bills, and there were a score or more introduced in each session of Congress, were drafted by the best legal talent in Congress and in the Department of Justice. The repeated efforts of these legal lights to secure authority for the United States to sue for injunctive relief in cases like the present one, is eloquent evidence of the lack of such authority.